

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Kristi Cordova

Confirmation No.: 7024

Application No.: 10/050,290

Examiner: R. Laneau

Filing Date: 01-16-2002

Group Art Unit: 3627

Title: MARKETING AND E-COMMERCE TOOL AND METHOD FOR CHANNEL PARTNERS

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PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on July 1, 2005.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

() (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

| | |
|------------------|-----------|
| () one month | \$120.00 |
| () two months | \$450.00 |
| () three months | \$1020.00 |
| () four months | \$1590.00 |

() The extension fee has already been filled in this application.

(X) (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account **08-2025** the sum of \$500.00. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Respectfully submitted,

Kristi Cordova

By Michael J. Fogarty, III

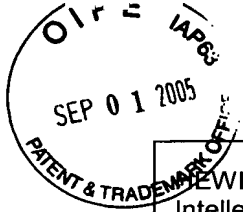
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Docket No.: 100110484-1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Kristi Cordova

Application No.: 10/050,290

Confirmation No.: 7024

Filed: January 16, 2002

Art Unit: 3627

For: MARKETING AND E-COMMERCE TOOL
AND METHOD FOR CHANNEL PARTNERS

Appellee: R. Laneau

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under § 41.37(a), this brief is filed within two months of the Notice of Appeal filed in this case on July 1, 2005, and is in furtherance of said Notice of Appeal.

The fees required under § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

- | | |
|-------|---|
| I. | Real Party In Interest |
| II | Related Appeals and Interferences |
| III. | Status of Claims |
| IV. | Status of Amendments |
| V. | Summary of Claimed Subject Matter |
| VI. | Grounds of Rejection to be Reviewed on Appeal |
| VII. | Argument |
| VIII. | Claims |
| IX. | Evidence |

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X. Related Proceedings
Appendix A Claims

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Hewlett-Packard Development Company, L.P., a Texas Limited Partnership having its principal place of business in Houston, Texas.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 17 claims pending in application.

B. Current Status of Claims

1. Claims canceled: 9, 16, 19
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1-8, 10-15, 17, 18 and 20
4. Claims allowed: None
5. Claims rejected: None

C. Claims On Appeal

The claims on appeal are claims 1-8, 10-15, 17, 18 and 20

IV. STATUS OF AMENDMENTS

Appellant did not file an Amendment After Final Rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

With regard to claims 1-3 and 5-7, the subject matter is a system (10, Figure 1, paragraph [0011]) comprising at least one reseller's electronic site (13-1 through 13-n, Figure 1, paragraph [0011]), each such site arranged to display information pertaining to products that are selectable by a user (paragraph [0011]), the products provided to the reseller from a source independent from the reseller (paragraph [0007]). The system also includes at least one database controlled by the independent source (163, Figure 1, paragraph [0014]), the database arranged to contain data specific to the source's products that are displayable to the user via the reseller's electronic site (paragraph [0014]). The system further includes at least one communication link controlled jointly by the source and the reseller (102-1 through 102-n, Figure 1, paragraph [0016]), the link used to electronically distribute the latest version of the data to the reseller (paragraph [0018]), the timing of the distribution determined by the source (paragraph [0023]).

Claim 4 further provides to the system of claim 1, at least one second communication link established from the source database to an accessing user at a reseller's electronic site (101, Figure 1, paragraphs [0014] and [0024]-[0025]) such that the accessing user may receive certain data directly from the source database while the accessing user remains in communication with the reseller's electronic site, the second communication link independent from the first-mentioned communication link (103-1 through 103-n, Figure 1, paragraphs [0024]-[0025]) .

According to claim 8, a method for updating a plurality of reseller electronic sites from a source location is described, the method comprising updating a database at the source location with information pertaining to a plurality of products (201, Figure 2, paragraph [0020]), delivering electronically, from time to time, as determined by the source location, the updated information from the database to the reseller sites (305, Figure 3, paragraphs [0021]-[0022]). The method further requires using, at each the reseller site, the data as

delivered from the source to directly populate electronic pages established on the reseller's electronic site (paragraph [0008]).

Claim 11 further provides that the method of claim 8 further comprise, at the reseller site, establishing a transactional relationship between a user and the reseller, receiving from the user a specific request (510, Figure 5, paragraphs [0017] and [0024]), and communicating the user's request to the source (504, Figure 5, paragraph [0024]). The method further including at the source, receiving user requests from the resellers, and directly fulfilling each the request from the source to the user while still maintaining the established transactional relationship (paragraphs [0017]-[0018]).

Claim 15 provides for a system comprising at least one reseller's electronic site (13-1 through 13-n, Figure 1, paragraph [0011]), each such site arranged to display to a user at the reseller's electronic site information pertaining to products selectable by the user (14, Figure 1, paragraph [0011]), the products provided to the reseller from a source independent from the reseller (paragraph [0007]), at least one database controlled by the source (163, Figure 1, paragraph [0014]), the database arranged to contain information specific to the source's products that are displayable to the user via the reseller's electronic site (paragraph [0014], and a communications link controlled at least in part by the reseller (102-1 through 102-n, Figure 1, paragraph [0016]) and responsive to a request for an electronic version of a user specified product (paragraph [0016]), the product being specified in a transaction between the user and the reseller (paragraph [0017]), the user accessing the database to provide the latest version of the user specified product directly from the database to the user (paragraph [0017]).

According to claim 18 a method for controlling data presentation to users who access a selected one of a plurality of reseller electronic sites is described, the method comprising maintaining a source location database with information pertaining to a plurality of products (163, Figure 2, paragraph [0020]), from time to time, on request of a particular one of the reseller sites (301, Figure 3, paragraph [0021]), delivering a requested portion of the information from the database to an identified user then connected electronically to the reseller's electronic site (14, Figure 1, paragraph [0016]), the information delivered over a

link identified by the reseller at a time when the user remains connected to the reseller's site (101, Figure 1, paragraph [0018]). The method further includes accepting a purchase order for a user selected product under control of the source location (paragraph [0017]), controlling the delivery of the product to the user by the source location (paragraph [0018]), and concurrently while the order is being accepted by the source location maintaining a commercial relationship between the user and the reseller to which the user is then electronically connected (paragraph [0017]).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-8, 10-15, 17, 18 and 20 are properly rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Number 2003/0120550 A1 to Peyrelevade et al. (hereinafter "Peyrelevade").

VII. ARGUMENT

It is well settled that to anticipate a claim, the reference must teach every element of the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Moreover, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he elements must be arranged as required by the claim," *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Furthermore, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim," *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989). Appellants respectfully assert that the rejection does not satisfy these requirements.

A. Claims 1-3 and 5-7

Claim 1 requires in part, at least one reseller's electronic site, each such site arranged to display information pertaining to products, the products provided to the reseller from a source independent from the resell, and at least one communications link controlled jointly by the source and the reseller, the link used to electronically distribute the latest version of the data to the reseller, where the timing of the distribution is controlled by the source.

Peyrelevade, conversely, describes making modules containing product information available to one or more websites. See, Abstract. Peyrelevade discloses three methods by which the information in the module may be made available to the website. The modules may be (i) transmitted on storage media; (ii) made available for download, or (iii) be made available to be linked. Paragraph [0035]. The mechanisms for providing the information contained in the modules require action by the website operator or user in order to retrieve the latest version of the data. Peyrelevade does not disclose a source controlling the electronic distribution of the data, where the timing of the distribution is determined by the source.

The Appellee, in the Final Office Action dated April 6, 2005 (hereinafter “Final Office Action”) has cited to paragraph [0041] as describing this feature. Appellant respectfully disagrees. Paragraph [0041] merely states that information provided to one website can be withheld from other websites. Nothing in paragraph [0041] describes any other mechanism for distribution different from those described in paragraph [0035] as set forth above.

The Appellee further stated in the Response to Arguments from the Final Office Action that “Appellant argues that the rejection does not show ‘electronic distribution of the latest version of data’ as claim but Peyrelevade et al discloses in box [0127] ‘creating and distributing (electronically) to the subject a computer program (latest data) configured to run on the subject’s workstation or computer.’” Again, nothing in paragraph [0127] describes a mechanism for distribution in which the timing of the distribution is determined by the source, as required by claim 1.

Further, the computer program of paragraph [0127] used by the Appellee does not describe “data specific to the source’s products that are displayable to the user via the reseller’s electronic site” to which latest data in claim 1 refers. As the rejection of record does not show electronic distribution where the timing of the distribution is determined by the source as required in claim 1, all elements of claim 1 are not described in Peyrelevade, as required by § 102.

Claims 2, 3, and 5-7 depend directly from base claim 1, and thus inherit all limitations of the base claim. Claims 2, 3, and 5-7, therefore, set forth features and limitations not recited by Peyrelevade for at least the reasons set forth above.

B. Claim 4

Claim 4 requires, in addition to the limitations of claim 1, at least one second communication link established from the source database to an accessing user at a reseller's electronic site such that the accessing user may receive certain data directly from the source database while the accessing user remains in communication with the reseller's electronic site, the second communication link independent from the first-mentioned communication link.

The Appellee refers to paragraph [0061] as describing this limitation. Appellant respectfully disagrees. Paragraph [0061] describes Figure 3 which clearly does not show a second communications link between the user and the source database while the accessing user remains in communication with the reseller's electronic site. Paragraph [0061] describes the various links but does not describe, nor does Figure 3 show, a second communication link while the accessing user remains in communication with the reseller's electronic site. Therefore, claim 4 sets forth additional limitations not disclosed by Peyrelevade.

C. Claims 8, 10 and 12-14.

Claim 8 requires in part, updating a database at a source location with information pertaining to a plurality of products, and delivering electronically, from time to time, as determined by the source location, the updated information from the database to the retailers sites.

Peyrelevade's methods of distribution for its modules do not include the timing of the distribution of information determined by the source, but instead require the website to take some action to pull the information from the database holding the module. Paragraph [0035]. As Peyrelevade does not disclose delivering electronically, from time to time, as determined by the source location the updated information, all elements of claim 8 are not present as required by the rejection of record.

Claims 10-14 depend directly from base claim 8, and thus inherit all limitations of the base claim. Claims 10-14, therefore, set forth features and limitations not recited by Peyrelevade for at least the reasons set forth above.

D. Claim 11

Claim 11 requires, in addition to the limitations of claim 8, establishing a transactional relationship between a user and the reseller, receiving from the user a specific request, and communicating the user's request to the source, at the source receiving user requests from the resellers, and directly fulfilling each the request from the source to the user while still maintaining the established transactional relationship.

The Appellee contends in the Response to Arguments of the Final Office Action that Peyrelevade et al "does disclose completing a transaction by allowing a user to purchase a product." While Peyrelevade discloses the use of a payment engine that allows a customer to purchase the product over the internet, including using the reseller's payment engine (paragraphs [0108-0109]), Peyrelevade does not disclose directly fulfilling each request from the source to the user while still maintaining the established transactional relationship. Peyrelevade does not disclose any mechanism for delivery of the product to the user. Peyrelevade only discloses mechanisms for delivering product information to the reseller for display as described with reference to claim 1. Paragraph [0035]. As controlling the delivery of the product to the user by the source location is not disclosed, all the elements of claim 11 are not shown as required under the rejection of record.

E. Claims 15 and 17

Claim 15 requires in part, a communications link ... responsive to a request for an electronic version of a user specified product, the product being specified in a transaction between the user and a reseller, the user accessing a database controlled by a source to provide the latest version of the product directly from the database.

Peyrelevade only discloses providing modules with current product and marketing information, and Peyrelevade only discloses that the products that it provides current product and marketing information are beauty products. see paragraph [0132]. Peyrelevade does not

disclose products that themselves can be delivered only electronically. Only product information and programs related to obtaining and displaying that information are disclosed as being in electronic format. See, for example, paragraph [0059] and [0111] describing the program as used to implement the invention. Peyrelevade, therefore, does not disclose allowing a user to directly access an electronic version of a product from the source of the product.

The Appellee contends in the Response to Arguments of the Final Office Action that Peyrelevade et al “does disclose completing a transaction by allowing a user to purchase a product.” The Appellee, however, cannot show where Peyrelevade discloses an electronic version of a user specified product as Peyrelevade does not disclose this limitation. As a communications link responsive to a request for an electronic version of a user specified product, the user accessing the database to provide the latest version of the user specified product directly from the database to the user is not shown in Peyrelevade, all of the elements of claim 15 are not present as required under §102.

Claim 17 depends directly from base claim 15, and thus inherits all limitations of the base claim. Claim 17, therefore, sets forth features and limitations not recited by Peyrelevade for at least the reasons set forth above.

F. Claims 18 and 20

Claim 18 requires in part, accepting a purchase order for a user selected product under the control of a source location, controlling the delivery of the product to the user by the source location, and maintaining the commercial relationship between the user and the reseller.

While Peyrelevade discloses the use of a payment engine that allows a customer to purchase the product over the internet, including using the reseller’s payment engine (paragraphs [0108-0109]), Peyrelevade does not disclose controlling delivery of the product to the user by the source location. Peyrelevade does not disclose any mechanism for delivery of the product to the user. Peyrelevade only discloses mechanisms for delivering product information to the reseller for display as described with reference to claim 1. Paragraph

[0035]. As controlling the delivery of the product to the user by the source location is not disclosed, all the elements of claim 18 are not shown as required under the rejection of record.

Claim 20 depends directly from base claim 18, and thus inherits all limitations of the base claim. Claim 20, therefore, sets forth features and limitations not recited by Peyrelevade for at least the reasons set forth above.

VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A. As indicated above, the claims in Appendix A do include the amendments filed by Appellant on January 5, 2005.

IX. EVIDENCE

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the Appellee is being submitted as reflected in Appendix B.

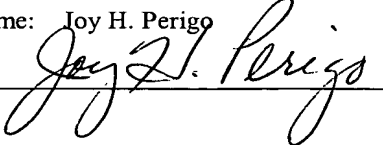
X. RELATED PROCEEDINGS

No related proceedings are referenced in II. above, or copies of decisions in related proceedings are not provided, as reflected in Appendix C.

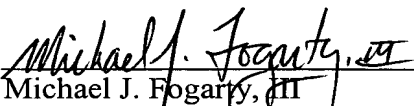
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Signature: 

Respectfully submitted,

By: 
Michael J. Fogarty, III
Attorney/Agent for Appellant(s)
Reg. No. 42,541
Date: September 1, 2005
Telephone No. (214) 855-8172

APPENDIX A

Claims Involved in the Appeal of Application Serial No. 10/050,290

1. A system comprising:
 - at least one reseller's electronic site, each such site arranged to display information pertaining to products that are selectable by a user, said products provided to said reseller from a source independent from said reseller;
 - at least one database controlled by said independent source, said database arranged to contain data specific to said source's products that are displayable to said user via said reseller's electronic site; and
 - at least one communication link controlled jointly by said source and said reseller, the link used to electronically distribute the latest version of the data to said reseller, the timing of said distribution determined by said source.
2. The system of claim 1 wherein said source-controlled database can communicate to a plurality of electronic sites, each controlled by a different reseller.
3. The system of claim 1 further comprising means for causing the distribution of product data to a plurality of reseller's electronic sites, such that the product data will be uniformly displayed to an accessing user regardless of which one of said plurality of reseller's electronic sites said user accesses.
4. The system of claim 1 further comprising:
 - at least one second communication link established from said source database to an accessing user at a reseller's electronic site such that said accessing user may receive certain data directly from said source database while said accessing user remains in communication with said reseller's electronic site, said second communication link independent from said first-mentioned communication link.
5. The system of claim 1 further including:
 - means at said reseller's electronic site for receiving distributed versions of the data and for using said distributed data to directly populate already established electronic pages at said reseller's electronic site.

6. The system of claim 1 wherein said communication links extend to a plurality of reseller sites.

7. The system of claim 6 wherein each of said plurality of reseller sites includes: means for using data distributed over said communication links from said source database to directly populate already existing electronic pages such that the data that is distributed from said source database is uniformly displayed to a user regardless of which of said reseller's electronic sites said user accesses.

8. A method for updating a plurality of reseller electronic sites from a source location; said method comprising:

updating a database at said source location with information pertaining to a plurality of products; and

delivering electronically, from time to time, as determined by said source location, said updated information from said database to said reseller sites; and

using, at each said reseller site, the data as delivered from said source to directly populate electronic pages established on said reseller's electronic site.

10. The method of claim 8 wherein said directly populating is operable to establish uniformity at all said reseller electronic sites.

11. The method of claim 8 further comprising, at said reseller site:

(a) establishing a transactional relationship between a user and said reseller;

(b) receiving from said user a specific request; and

(c) communicating said user's request to said source; and

said method further including the steps at said source of:

(a) receiving user requests from said resellers; and

(b) directly fulfilling each said request from said source to said user while still maintaining said established transactional relationship.

12. The method of claim 11 wherein said direct fulfillment includes:
providing one of specification sheets, content, physical delivery; and
wherein said maintained transactional relationship controls of payment between said user and said reseller.

13. The method of claim 11 wherein said system maintains the traditional channel relationships between said source, said reseller and said users.

14. The method of claim 11 wherein said source location provides leads to said reseller based on received ones of said user requests.

15. A system comprising:
at least one reseller's electronic site, each such site arranged to display to a user at said reseller's electronic site information pertaining to products selectable by said user, said products provided to said reseller from a source independent from said reseller;
at least one database controlled by said source, said database arranged to contain information specific to said source's products that are displayable to said user via said reseller's electronic site; and
a communications link controlled at least in part by said reseller and responsive to a request for an electronic version of a user specified product, said product being specified in a transaction between said user and said reseller, said user accessing said database to provide the latest version of said user specified product directly from said database to said user.

17. The system of claim 15 further including:
communication links controlled at least in part by a plurality of resellers and responsive to a request for an electronic version of a user specified product from a user at any of said resellers for providing said user with said user specified product while still maintaining the connection from said user to the reseller selected by said user.

18. A method for controlling data presentation to users who access a selected one of a plurality of reseller electronic sites; said method comprising:

maintaining a source location database with information pertaining to a plurality of products;

from time to time, on request of a particular one of said reseller sites, delivering a requested portion of said information from said database to an identified user then connected electronically to said reseller's electronic site, said information delivered over a link identified by said reseller at a time when said user remains connected to said reseller's site;

accepting a purchase order for a user selected product under control of said source location;

controlling the delivery of said product to said user by said source location; and

concurrently while said order is being accepted by said source location maintaining a commercial relationship between said user and the reseller to which said user is then electronically connected.

20. The method of claim 18 further comprising providing statistical data for each said reseller pertaining only to users who were serviced by said source location under control of said reseller.

Application No.: 10/050,290

Docket No.: 100110484-1

APPENDIX B - EVIDENCE

None submitted.

APPENDIX C – RELATED PROCEEDINGS

None.



Application No.: 10/050,290

Attorney Docket No.: 100110484-1

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